

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.14690 OF 2006

Between:

Badruddin Dewani and another

. . .Petitioners

AND

The Kukatpally Municipality

. . .Respondent

Counsel for the Petitioners

: Shri P.Veera Reddy

Counsel for the Respondent

: Shri P.Radhakrishna

Dated: 14th September, 2006

: ORDER :

PER G.S.SINGHVI, CJ

In this petition, the petitioners have prayed for quashing notice dated 11.07.2006 issued by Commissioner, Kukatpally Municipality, Ranga Reddy District (respondent herein) requiring them to remove unauthorized construction raised in premises No.2-22-280 situated at Bhagyanagar colony.

In the affidavit filed by him, petitioner No.1 – Badruddin Dewani has averred that they had purchased the premises No.2-22-280, which was constructed by the owner after obtaining the sanctioned plan. He has further averred that even though no deviation has been made from the sanctioned plan, the respondent issued the impugned notice for demolition of the so called unauthorized construction and that too without giving them action oriented notice and opportunity of hearing.

We have heard learned counsel for the parties and perused the record. In the affidavit filed by petitioner No.1, he has made reference to a number of documents including the sanctioned plan and has averred that the construction made by the owner is not in violation of the sanctioned plan.

At the hearing, we asked the learned counsel to show the sanctioned building plan and other documents to which reference has been made in the affidavit of petitioner No.1, but he failed to invite our attention to any such document.

In our opinion, the petitioners' failure to produce basic documents, which constitute the foundation of their claim that no unauthorized construction has been raised by the owner, disentitles them for seeking relief under Article 226 of the Constitution of India.

However, keeping in view the fact that the impugned notice was issued without complying with the rules of natural justice, we feel that ends of justice would be met by giving liberty to the petitioners to appear before the Commissioner and produce all the documents to show that they have not made any unauthorized construction with a further direction to the Commissioner to decide the same within a specified time frame.

Hence, the writ petition is disposed of with the following directions:

- 1) Within seven days from today, the petitioners shall appear before the Commissioner and produce all documents to show that they have not raised any construction in violation of the sanctioned plan. They shall also be free to raise all legally permissible objections against notice dated 11.07.2006.
- 2) Within next two weeks, the Commissioner shall consider the objections and documents produced by the petitioners, hear them and pass appropriate order.
- 3) If the Commissioner comes to the conclusion that the petitioners have made unauthorized construction or any deviation has been made from the sanctioned plan, then he may order demolition of such illegal or unauthorized construction. However, such order shall not be given effect for a period of seven days within which the petitioners shall be free to avail appropriate legal remedy including the one by way of filing fresh petition.

Since the notice impugned in the writ petition was issued in furtherance of the direction given by the Division Bench, we direct that in future, the writ petitions filed in the matter of removal of unauthorized structure or illegal construction shall be listed before the Division

Bench as per roster.

We also deem it proper to observe that before issuing notice for demolition, the concerned authorities of the municipality should comply with the rules of natural justice. This would go a long way to obviate unnecessary litigation.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 14.09.2006

Note: The Court Officer is directed to give attested copies of this order to the learned counsel for the parties.

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